THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.8127 OF 1994

Dated 24th September, 2007

Between:

Muppa Ravindranath & brothers
Rep. by Sri M.Sarathbabu … Petitioner

And

The Government of A.P. rep.
By its Secretary and another … Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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O R D E R (Per the Hon'ble Sri Justice Bilal Nazki):

Heard learned counsel for the parties.

This writ petition has been filed seeking a direction from this Court that sub-section (2) of Section 212 of the Hyderabad Municipal Corporations Act, 1955 (for short "the Act") to the extent it relates to imposing tax on capital value of the land was *ultra vires* to the Constitution.

It is submitted that in terms of Entry 86 of List–I-Union List of Schedule VII of the Constitution, the power to tax on the capital value of the land rests with the Union of India.

Entry 86 of List-I of Schedule VII of the Constitution reads as under-

> "86.Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies"

Whereas the respondents submit that the tax levied under Section 212(2) of the Act is levied in terms of Entries 45 and 49 of List-II-State List of Schedule VII.

Entries 45 and 49 of List –II of Schedule VII read as under-

> "45. Land revenue, including the assessment and collection of revenue, the maintenance of land records,

survey for revenue purposes and records of rights, and alienation of revenues.

49. Taxes on lands and buildings."

Section 212(2) of the Act reads as under-

"Any vacant land not exceeding three times the plinth area of the building including its site or a vacant land to the extent of one thousand square meters, whichever is less shall be deemed to be adjacent premises occupied as an appurtenant to the building, and assessed to tax in accordance with the provisions of this section and the area, if any, in excess of the said limit shall be deemed to be land not occupied by or adjacent and appurtenant to such building and the tax shall be levied thereon at two per cent of the estimated capital value of land."

It is the contention of the learned counsel for the petitioner that a vacant land is assessed to tax on the basis of its capital value, which is not within the purview of the State Legislature.

Learned Advocate General appeared in the matter. He has drawn our attention to a five-Judge Bench judgment of the Supreme Court in **Assistant Commissioner of Urban Land Tax, Madras and others etc. v. Buckingham and Carnatic Co. Ltd**[1]**.** In this judgment, this question directly fell for consideration of the Supreme Court and the Supreme Court in paras 5 and 7 held-

"5. The first question to be considered in these appeals is whether the Madras Legislature was competent to enact the legislation under Entry 49 of List II of Schedule

VII of the Constitution which reads: "Taxes on lands and buildings". It was argued on behalf of the petitioners that the impugned Act fell under Schedule VII List I, Entry 86 that is "Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies, taxes on the capital of companies". The argument of Mr. V.K.T. Chari may be summarised as follows:

The impugned Act was, both in form and substance, taxation of capital and was hence beyond the competence of the State Legislature. To tax on the basis of capital or principal value of assets was permissible to Parliament under List I, Entries 86 and 87 and to State under Entry 48 of List II. Taxation of capital was the appropriate method provided for effecting the directive principle under Article 39 of the Constitution, namely, to prevent concentration of wealth. Article 366 (9) contains a definition of 'estate duty' with reference to the principal value. Entry 86 of List I (Taxes on capital value of assets exclusive of agricultural land) and Entry 88 (Duties in respect of succession to such property) form a group of entries the scheme of which as to carry out the directive principle of Article 39 (c). The Constitution indicated that capital value or principal value shall be the basis of taxation under these entries and therefore, the method of taxation' of capital or principal value was prohibited even to Parliament in respect of other taxes and to the State except in respect of Estate Duty on agricultural land. Such in effect is the argument of Mr. V.K.T. Chari. But in our opinion there is no warrant for the assumption that entries 86, 88 of List I and Entry 48 of List II form a special group embodying any particular scheme. The directive principle embodied in Article 39 (c) applies both to Parliament and to the

State Legislature and it is difficult to conceive how entries 86 to 88 of List I would exclude any power of the State Legislature to implement the same principle. The legislative entries must be given a large and liberal interpretation, the reason being that the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere simplex enumeratio of broad categories. We see no reason, therefore, for holding that the Entries 86 and 87 of List I preclude the State Legislature from taxing capital value of lands and buildings under Entry 49 of List II. In our opinion there is no conflict between Entry 86 of List I and Entry 49 of List II. The basis of taxation under the two entries is quite distinct. As regards Entry 86 of List I the basis of the taxation is the capital value of the asset. It is not a tax directly on the capital value of assets of individuals and companies on the valuation date. The tax is not imposed on the components of the assets of the assessee. The tax under Entry 86 proceeds on the principle of aggregation and is imposed on totality of the value of all the assets. It is imposed on the total assets which the assessee owns and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account. In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets it may be possible to break up the tax which is leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. In such a case the component out of the total tax attributable to lands and buildings may in the matter of computation bear

similarly to a tax on lands and buildings levied on the capital or annual value under Entry 49, List II. But in a normal case a tax on capital value of assets bears no definable relation to lands and buildings which may or may not form a component of the total assets of the assessee. But Entry 49 of List II, contemplates a levy of tax on lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under Entry 86, List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49, List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not make the fields of legislation under the two entries overlapping. The two taxes are entirely different in their basic concept and fall on different subject matters.

7. The problem in this case is the problem of characterization of the law. In other words the question must be asked; what is the subject matter of the legislation in its "pith and substance" or in its true nature and character for the purpose of determining whether it is legislation with respect of Entry 49 of List II or Entry 86 of List I. In Gallahagher v Lynn 137 AC 863 at p. 870 the principle is stated as follows:

"It is well established that you are to look at the true

nature and character of the legislation, the pith and substance of the legislation. If on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field. The legislation must not under the guise of dealing with one matter in fact encroach upon the forbidden field. Nor are you to look only at the object of the legislator. An Act may have a perfectly lawful object e.g., to promote the heath of the inhabitants; but may seek to achieve that object by invalid methods, e.g., direct prohibition of any trade with a foreign country. In other words, you may certainly consider the clauses of an Act to see whether they are passed "in respect of the forbidden subject".

In the case of Subrahmanyan Chettier v Muttuswami Goundan, 140 FCR 1588 at p. 201 = (AIR 1941 FC 47 at p. 51), Sir Maurice Gwyer, C. J. said:

"It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its 'pith and substance', or its 'true nature of character', for the purpose of determining whether it is legislation with respect to matters in this list or in that: Citizens Insurance Company of Canada v. Parsons, 1881-7 AC

96; Russell v. The Queen, 1882-7 AC 829; Union Colliery Co. of British Columbia v. Bryden, 1899 AC 580; Att. Gen. for Canada v. Att. Gen. for British Columbia, 1930 AC 111; Board of Trustees of Lethbridge Irrigation District v. Independent Order of Foresters 1940 AC 513. In my opinion this rule of interpretation is equally applicable to the Indian Constitution Act".

For the reasons already expressed we hold that in pith and substance the new Act in imposing a tax on urban land at a percentage of the market value is entirely within the ambit of Entry 49 of List II and within the competence of the State Legislature and does not in any way trench upon the field of legislation of Entry 86 of List I".

In view of this judgment of the Supreme Court, we have no doubt in our mind that the provision challenged is not *ultra vires.* Learned counsel for the petitioner, however, has drawn our attention to a two-Judge Bench judgment of the Supreme Court in **Hyderabad Rate Payers Association & others vs. The Government of A.P. and others**[2]**.** In our view this judgment has not dealt with the question raised before us in this writ petition.

The writ petition is accordingly dismissed. No order as to costs.

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Bilal Nazki,J

Dated 24th September, 2007

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Ramesh Ranganathan,J

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[1] AIR 1970 S.C.169

[2] 1970 APLJ 38